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VIA E-FILING

The Honorable Colm F. Connolly
District Court of Delaware
J. Caleb Boggs Federal Building
844 N. King Street
Unit 31, Room 4124
Wilmington, DE 19801-3555

Re: *Alnylam Pharm., Inc. v. Moderna, Inc., et al.*, C.A. No. 22-335-CFC (Cons.)

Dear Chief Judge Connolly:

We represent Plaintiff Alnylam Pharmaceuticals, Inc. We write in response to Defendants Moderna, Inc., ModernaTX, Inc., and Moderna US, Inc.’s (collectively “Moderna”) Notice of Subsequent Authority, D.I. 56, which submitted the Government’s Statement of Interest that was filed in *Arbutus Biopharma Corp. v. Moderna, Inc.*, C.A. No. 22-252 (D. Del. Feb. 14, 2023). For the reasons explained in Alnylam’s opposition to Moderna’s partial motion to dismiss (D.I. 14), the Court should deny Moderna’s partial motion.

In the Statement of Interest, the Government explained, “[a]t this time, the Government is only aware of [] two procurement contracts between the Government and Moderna that relate to the purchase of Moderna’s mRNA-1273 vaccine at issue [in *Arbutus*].” D.I. 56, Ex. 1 at 4. The first was entered into in August 2020—before Alnylam’s patent issued in February 2022. These are the only claims that the Government contends “should be dismissed.” *Compare* D.I. 56 at 1-2 (Moderna’s Notice of Subsequent Authority), *with* D.I. 56, Ex. 1 at 3 (Statement of Interest). Alnylam is not seeking relief for acts of infringement prior to the February 2022 date.

The Honorable Colm F. Connolly
February 17, 2023
Page 2

The second contract was entered July 28, 2022. As to that July 28, 2022 contract, the Government contends that “the ’-0017 Contract contains a special provision, H.14, that states the contracting parties’ express agreement that the terms of the contract *do not constitute express or implied Government authorization or consent under section 1498.*” D.I. 56, Ex. 1 at 4 (emphasis added). The Government’s submission is consistent with Alnylam’s position that Moderna’s partial motion to dismiss is flawed given (i) infringing acts in the U.S. that plainly are not subject to Section 1498 and (ii) the deep factual issues underlying the motion on whether any act of infringement at all is subject to Section 1498.

Respectfully,

/s/ *Ethan H. Townsend*

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cc: All Counsel of Record (via CM/ECF)